



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

---

86 Chambers Street  
New York, NY 10007

January 12, 2018

**By ECF:**

The Honorable P. Kevin Castel  
United States District Judge  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl St.  
New York, NY 10007-1312

Re: *New York Times and Benjamin Protess v. Dep't of Transportation,*  
No. 17 Civ. 7510 (PKC)

Dear Judge Castel:

I am the Assistant United States Attorney assigned to the above-referenced case, an action under the Freedom of Information Act (“FOIA”). My Office represents the United States Department of Transportation (“DOT” or the “government”). Together with counsel for plaintiffs, we write jointly in accordance with the Court’s October 3, 2017 Order, ECF No. 6, to provide some background on the case.

**Brief description of the case.** Plaintiffs’ FOIA request seeks certain documents referencing communications between DOT and the Executive Office of the President relating to two rail projects. *See* Complaint ¶ 9. As discussed in previous government letters, DOT has completed certain initial searches for documents, and the government has provided plaintiffs with details of how this search was conducted. Following further discussions, the government is conducting some additional searches in an effort to resolve any potential dispute about the adequacy of the initial search, and potentially resolve this case. To date, the government’s searches have yielded no responsive documents. Should the case proceed in litigation, the main disputes will likely concern the adequacy of the search and the legal propriety of any withholdings.

**Contemplated motions.** If the parties’ efforts to resolve the case without litigation are unsuccessful, it is likely that the parties would file cross-motions for summary judgment as to the adequacy of the government’s search and the propriety of any withholdings.

**Prospect for settlement.** As noted above, the government is currently completing certain additional searches in an effort to resolve any questions about the adequacy of the search. The parties are hopeful that the case may be resolved by the government’s answer date without the need to litigate any issues. This will depend in substantial part on the outcome of the searches.

We thank the Court for its attention to this matter.

Respectfully,

GEOFFREY S. BERMAN  
United States Attorney

By: /s/ Peter Aronoff  
PETER ARONOFF  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, NY 10007  
Tel: (212) 637-2697  
[peter.aronoff@usdoj.gov](mailto:peter.aronoff@usdoj.gov)

/s/ David E. McCraw  
David E. McCraw, Esq.  
Legal Department  
The New York Times Company  
620 Eighth Avenue, 18th Floor  
New York, NY 10018  
Phone: (212) 556-4031  
Fax: (212) 556-1009  
Email: [mccrad@nytimes.com](mailto:mccrad@nytimes.com)